

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	
FM Broadcast Stations.)	
(Barstow, California))	MB Docket No. 03-147
)	RM-10722
)	
(Newcastle, Texas))	MB Docket No. 03-148
)	RM-10724
)	
(Grapeland, Texas))	MB Docket No. <u>03-149</u>
)	RM-10725
)	
)	
)	

NOTICE OF PROPOSED RULE MAKING

Adopted: June 30, 2003

Released: July 1, 2003

Comment Date: August 22, 2003

Reply Comment Date: September 8, 2003

By the Assistant Chief, Audio Division:

1. Before the Audio Division for consideration is a multiple docket *Notice of Proposed Rule Making* setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. The petitioner for each proposal has stated that it will apply for each requested channel, if allotted. Each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket *Notice of Proposed Rule Making* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MB Docket No. 03-147; RM-10722

Petitioner: Linda A. Davidson
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 267A at Barstow, California, as the community's third local FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Barstow, California	231B1, 240B1	231B1, 240B1, 267A

Coordinates: 34-53-55 NL and 117-01-19 WL

Additional Information: This allotment is located at city reference coordinates and requires no site restriction. Since Barstow is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

Contact: Sharon P. McDonald (202) 418-2180

B. MB Docket No. 03-148; RM-10724

Petitioner: Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Proposal: Allot Channel 263A at Newcastle, Texas, as the community's first local aural transmission service.¹

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Newcastle, Texas	---	263A

Coordinates: 33-13-10 NL and 98-43-01 WL

Additional Information: This allotment requires site restriction of 3.6 kilometers (2.2 miles) northeast to avoid a short-spacing to the licensed site of Station KHYS(FM), Channel 264C1 at Abilene, Texas.

¹ In support of his proposal, petitioner states that Newcastle is an incorporated city with a 2000 U.S. Census population of 575 persons. Newcastle has its own mayor, a post office, schools, a volunteer fire department, city offices, and a number of local churches

FCC Contact: Sharon P. McDonald (202) 418-2180

C. MB Docket No. 03-149; RM-10725

Petitioner: Robert Fabian
4 Hickory Crossing Lane
Argyle, Texas 76226

Proposal: Allot Channel 280A at Grapeland, Texas, as the community's second local FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Grapeland, Texas	232C2	232C2, 280A

Coordinates: 31-32-45 NL and 95-22-42 WL

Additional Information: This allotment requires a site restriction of 11.4 kilometers (7.0 miles) northeast to avoid short-spacings to the licensed sites of Station KJCS(FM), Channel 277C2 at Nacogdoches, Texas, Station KXCS(FM), Channel 280C2, Cameron, Texas, and Station KKUS(FM), Channel 281C2, Tyler, Texas.

FCC Contact: Sharon P. McDonald (202) 418-2180

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket *Notice of Proposed Rule Making* should reference *only* the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 22, 2003, and reply comments on or before September 8, 2003, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.²

² See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend*

6. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

7. For further information concerning this proceeding, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. **Showings Required.** Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. **Cut-off protection.** The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. **Comments and Reply Comments; Service.** Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W.; TW-A325, Washington, D.C. 20554.

5. **Number of Copies.** In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W, Washington, D.C.